

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DOUGLAS E. FENNER,

Plaintiff,

vs.

RAYMOND E. MABUS; DEPARTMENT
OF THE NAVY; AND DOES 1 through 100,
Inclusive,

Defendants.

CASE NO. 12-CV-366 JLS (WMc)

**ORDER DENYING MOTION TO
APPOINT COUNSEL**

(ECF No. 3)

Plaintiff Douglas E. Fenner, proceeding pro se, has filed a Complaint alleging employment discrimination on the basis of race and age against Defendants Raymond E. Mabus, Secretary of the Navy, and the Department of the Navy. (Compl., ECF No. 1.) He subsequently filed a motion to appoint counsel, which is presently before the Court. (Mot. to Appoint Counsel, ECF No. 3.)

As a general rule, there is no constitutional right to appointed counsel in a civil case. *Lassiter v. Dep't of Soc. Servs. of Durham County, N.C.*, 452 U.S. 18, 25 (1981). However, in employment discrimination cases, Title VII of the Civil Rights Act of 1964 ("Title VII") does contemplate appointment of counsel "in such circumstances as the court may deem just." 42 U.S.C. § 2000e-5(f)(1); *Bradshaw v. Zoological Soc. of San Diego*, 622 F.2d 1301, 1318 (9th Cir. 1981). Analyzing these criteria, district courts in California have found that qualifying parties may be referred to pro bono appointment programs that will attempt to locate a volunteer attorney to

1 represent the party. *See, e.g., Lee v. AT&T Corp.*, 2010 WL 2348683, at *2 (N.D. Cal. June 8,
2 2010). Such appointment of counsel is certainly not mandatory; rather, the determination is left to
3 the district court's sound discretion. *See Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266,
4 269 (9th Cir. 1982). Three factors have emerged as relevant to the court's determination: "(1) the
5 plaintiff's financial resources; (2) the efforts made by the plaintiff to secure counsel on his own;
6 and (3) the meritoriousness of plaintiff's claims." *Id.*

7 Although Plaintiff's employment discrimination claims appear to be sufficiently
8 meritorious for the purposes of appointing counsel, the Court finds both Plaintiff's financial
9 resources and the related inquiry of the reasonableness of Plaintiff's efforts to secure his own
10 counsel weigh heavily against appointing counsel at this time.

11 In his motion, Plaintiff indicates he is employed at the Space and Naval Warfare Systems
12 Command, earning wages of \$10,500 per month. (Mot. to Appoint Counsel 5.) He also describes
13 several of his assets, the combined value of which totals over a million dollars, and states he has
14 \$54,000 in his savings or checking accounts. (*Id.* at 6.) Plaintiff's debts and bills apparently
15 exceed \$9,000 per month, including \$2,000 per month to his daughter's college, \$3,995 per month
16 for payment of his mortgage, \$1,248 per month in property taxes, and various other expenses. (*Id.*
17 at 6-7.) Although a party requesting appointment of counsel need not show he is completely
18 destitute or indigent, the financial situation Plaintiff presents is far from grim. *Cf. Barnell v. Paine*
19 *Webber Jackson & Curtis*, 577 F. Supp. 976, 978 (S.D.N.Y. 1984) ("Plaintiff's financial picture is
20 grim: she has monthly expenses approximating \$1,000, outstanding debts approximating \$22,000,
21 assets worth approximately \$3,500, no current income, and remains unemployed.") Plaintiff has a
22 steady and substantial income, as well as considerable funds available in accessible bank accounts.
23 The Court has not ignored the hardships Plaintiff has recently faced with the injury and illness of
24 his wife, nor Plaintiff's substantial monthly expenses. However, Plaintiff simply has not shown
25 that he cannot afford to retain counsel on his own.

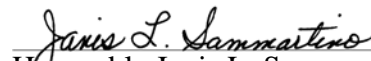
26 Similarly, Plaintiff has not shown that his efforts to secure counsel on his own were
27 sufficient. A party's efforts to secure counsel must be "reasonably diligent under the
28 circumstances." *Bradshaw*, 622 F.2d at 1319. Here, the Court finds Plaintiff has not been

1 reasonably diligent, particularly in light of the circumstances of his significant financial resources
 2 and what appears to be a potentially meritorious claim. In his motion, Plaintiff lists two attorneys
 3 with whom he talked about handling his claims, but states he could not afford either one due to
 4 financial hardship. (*Id.* at 3-4.) He further explains he inquired “with attorneys through the
 5 Internet” about contingency-fee or delayed payment schemes, but that none would accept his case
 6 without “a prepaid retainer.” (*Id.* at 4.) Plaintiff does not specify how many attorneys he
 7 approached on the Internet, and from the two attempts he did detail, described above, it seems
 8 Plaintiff merely approached attorneys he has previously retained. Although Plaintiff is certainly
 9 not required “to exhaust the legal directory” as a prerequisite to the appointment of counsel,
 10 *Bradshaw*, 622 F.2d at 1319 (quoting *Caston v. Sears, Roebuck & Co.*, 556 F.2d 1305, 1309 (5th
 11 Cir. 1997)), the Court finds a greater effort than contacting three or four attorneys is justified here.
 12 Further, the record does not reflect any efforts by Plaintiff to contact local law clinics or other
 13 types of less costly legal services.

14 For the foregoing reasons, the Court concludes that the circumstances do not warrant
 15 appointment of counsel at this time, and **DENIES** Plaintiff’s motion without prejudice.¹

16 **IT IS SO ORDERED.**

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 18 DATED: May 23, 2012

19 
 20 Honorable Janis L. Sammartino
 United States District Judge

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 28 ¹ The Court recognizes that circumstances may change so as to justify appointment of counsel.
 If so, Plaintiff may renew his motion at that time.